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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 **RENO MAY, an individual, et al.;**
14 Plaintiffs,

15 v.
16 **ROBERT BONTA, in his official**
17 **capacity as Attorney General of the**
18 **State of California, and Does 1-10,**

19 Case No. 8:23-cv-01696 CJC (ADSx)
20 8:23-cv-01798 CJC (ADSx)

21 **SUR-REBUTTAL DECLARATION**
OF DR. BRENNAN RIVAS IN
SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFFS'
MOTIONS FOR PRELIMINARY
INJUNCTION

22 Date: December 20, 2023
23 Time: 1:30 p.m.
24 Courtroom: 9B
25 Judge: Hon. Cormac J. Carney
26 Action Filed: September 15, 2023

27 **MARCO ANTONIO CARRALERO, an**
28 **individual, et al.,**
29 Plaintiffs,

30 v.
31 **ROBERT BONTA, in his official**
32 **capacity as Attorney General of**
33 **California,**

34 Defendant.

1 **SUR-REBUTTAL DECLARATION OF DR. BRENNAN GARDNER RIVAS**

2 I, Dr. Brennan Gardner Rivas, declare under penalty of perjury that the
3 following is true and correct:

4 1. This declaration is based on my own personal knowledge and
5 experience, and if I am called to testify as a witness, I could and would testify
6 competently to the truth of the matters discussed in this declaration.

7 2. I have been retained by the Office of the Attorney General for
8 California as a historical expert on gun regulations that pertained to public carry
9 laws and sensitive places, with a particular focus on regulations related to travelers,
10 transit companies, and transportation-related spaces.

11 3. I previously provided a declaration in the above-captioned matters in
12 support of the State of California's opposition to the *May* and *Carralero* Plaintiffs'
13 motions for preliminary injunction. See Decl. of Brennan Rivas, *May v. Bonta*,
14 C.D. Cal. No. 8:23-cv-01696 CJC (ADSx) (Dkt. No. 21-9); *Carralero v. Bonta*,
15 C.D. Cal. No. 8:23-cv-01798 CJC (ADSx) (Dkt. No. 20-9) (Rivas Decl.). My
16 professional background and qualifications, and my retention and compensation
17 information, are set forth in Paragraphs 3 through 6 of this previous declaration.

18 4. I have been asked by the Office of the Attorney General to review and
19 provide an expert opinion regarding some of the statements made in the plaintiffs'
20 reply briefs and supporting documents in these matters. *May* Dkt. Nos. 29, 29-9,
21 29-14, 29-15; *Carralero* Dkt. No. 29. I have reviewed those briefs and documents,
22 and have prepared this sur-rebuttal declaration in response.

23 **I. RESPONSE TO STATEMENTS MADE IN *MAY* PLAINTIFFS' EVIDENTIARY
24 OBJECTIONS TO RIVAS DECLARATION**

25 5. The *May* Plaintiffs object to several portions of my declaration,
26 claiming that I have provided insufficient citations for my conclusions. *See* Pls.'
27 Evidentiary Objections to Rivas Decl. ¶¶ 4, 7-10, 13-16, 19-21, *May v. Bonta* Dkt.
28 No. 29-2. To the extent that Plaintiffs raise this objection to the sections of my

1 declaration that summarize my conclusions (*see id.* ¶¶ 9, 13, 20-21; *see also* Rivas
 2 Decl. ¶¶ 57, 62, 76, 82), they misunderstand scholarly writing practice. These
 3 portions of my declaration do not quote directly from other sources, but rather
 4 discuss and explain the numerous historical sources and evidence that I cite to
 5 throughout my declaration. The expert analysis and opinions that I provide in
 6 Paragraphs 57, 62, 76, and 82 of my declaration are properly grounded in these
 7 sources and evidence.

8 6. The *May* Plaintiffs' claim that I provided "no citation" in support of
 9 Paragraphs 67 and 75 (*see* Pls.' Evidentiary Objections to Rivas Decl.
 10 ¶¶ 15, 19, *May v. Bonta* Dkt. No. 29-2) is inaccurate. Both of these paragraphs
 11 contain, and are soundly based upon, several citations to the historical record.

12 7. Similarly, the *May* Plaintiffs' claim that I cited only to my own
 13 scholarship in support of my statements in Paragraph 56 (*see id.* ¶ 8) is also untrue.
 14 In addition to my own publication, I also cited to John Thomas Shepherd's law
 15 review article, "Who is the Arkansas Traveler," in support of the statements made
 16 in this Paragraph. *See* Rivas Decl. ¶ 56, n.98.

17 8. The *May* Plaintiffs also object to my statement in Paragraph 36 of my
 18 declaration, that "[b]y the Civil War Era, the carrying of concealed weapons was
 19 more common than it had been in the eighteenth century, and pocket-sized pistols
 20 were more readily available to consumers." *See* Pls.' Evidentiary Objections to
 21 Rivas Decl. ¶ 4, *May v. Bonta* Dkt. No. 29-2. But this statement is clearly
 22 supported by the historical evidence set forth in my declaration, including but not
 23 limited to evidence of the influx of less expensive pistols throughout the country
 24 following the expiration of Samuel Colt's patent on his revolver design in 1857.
 25 *See* Rivas Decl. ¶ 43; *see also* Randolph Roth, *American Homicide* (Cambridge:
 26 Belknap Press of Harvard University Press, 2009), 56 (stating that few eighteenth-
 27 century Americans owned handguns).

28

1 9. Further, the *May* Plaintiffs object to my high-level discussion of the
2 development of transportation infrastructure in the nineteenth-century United
3 States, set forth in Paragraph 65 of my declaration, by claiming that these
4 statements are not supported by sufficient citations. *See* Pls.’ Evidentiary
5 Objections to Rivas Decl. ¶ 14, *May v. Bonta* Dkt. No. 29-2. To clarify, these
6 statements were drawn from knowledge that I have gained from reading numerous
7 peer-reviewed books and articles in the course of my historical scholarship, as well
8 as from the research I conducted in preparing my declaration in these cases
9 (particularly sources pertaining to colonial Philadelphia). Additional readings
10 related to river and rail transportation in the United States which I have read include
11 but are not limited to: Michael Allen, *Western Rivermen, 1763-1861: Ohio and*
12 *Mississippi Boatmen and the Myth of the Alligator Horse* (Baton Rouge: Louisiana
13 State University Press, 1990; Bonnie Stepenhoff, *Working the Mississippi: Two*
14 *Centuries of Life on the River* (Columbia: University of Missouri Press, 2015);
15 Richard White, *Railroaded: The Transcontinentals and the Making of Modern*
16 *America* (New York: W.W. Norton, 2011); for general histories of the United States
17 that discuss transportation, see Daniel Walker Howe, *What Hath God Wrought: The*
18 *Transformation of America, 1815-1848* (New York: Oxford University Press,
19 2007); and Richard White, *The Republic for Which It Stands: The United States*
20 *during Reconstruction and the Gilded Age, 1865-1896* (New York: Oxford
21 University Press, 2015).

22 10. Finally, the *May* Plaintiffs object to several sections of my declaration
23 that relate to historical appellate cases by attempting to characterize them as “legal
24 argument.” *See* Pls.’ Evidentiary Objections to Rivas Decl. ¶¶ 6, 11, 12 and 18,
25 *May v. Bonta* Dkt. No. 29-2. However, I do not purport to provide legal arguments
26 or opinions regarding these historical appellate cases; rather, I treat them as primary
27 sources that provide firsthand accounts of how American gun laws were understood
28 and interpreted at the time they were in effect. In the instances where I discussed

1 historical appellate cases in my declaration, they formed a crucial part of the history
 2 which I described and analyzed. Using such historical legal opinions as primary
 3 sources is a proper historical practice.

4 **II. RESPONSE TO STATEMENTS MADE IN CLAYTON CRAMER'S REBUTTAL
 5 DECLARATION FILED IN SUPPORT OF *MAY* PLAINTIFFS' REPLY**

6 11. In two important respects, the *May* Plaintiffs' declarant, Clayton
 7 Cramer, concurs with the opinions and conclusions set forth in my declaration.
 8 First, Cramer is in agreement that the 1753 Philadelphia mayoral proclamation—
 9 which mandated that no person carry any unlawful weapon and indicates that the
 10 Statute of Northampton was in effect in colonial Philadelphia—"might well be
 11 tradition." *See* Clayton Cramer Rebuttal Decl. ¶ 112, *May v. Bonta* Dkt. No. 29-15.
 12 Second, in Paragraph 41 of my declaration, I cited to *State v. Smith* (1856) as
 13 evidence that partially concealed weapons were considered violations of
 14 Louisiana's then-existing concealed carry law; notwithstanding Cramer's objections
 15 to my analysis, he did agree that "carrying fully or even partially concealed
 16 [weapons] was illegal." *Id.* ¶ 136.

17 12. Despite his concurrence with the foregoing points, Cramer raises
 18 several purported criticisms of my declaration, which I address below.

19 **A. Cramer's Statements Regarding Historical Appellate Cases**

20 13. Cramer takes issue with quotations that I used from cases *State v. Huntley* and *State v. Smith*, even claiming that I "quote[d] out of context" from
 21 *Huntley*. *See* Clayton Cramer Rebuttal Decl. ¶¶ 132-136, *May v. Bonta* Dkt. No.
 22 29-15. A quotation taken directly from a source document is not "out of context"
 23 when it accurately represents the viewpoint of the original statement. The plain
 24 language of *Huntley* shows that the court understood the right to bear arms as
 25 extending to the carrying of firearms for specific purposes, but not "as one of his
 26 every day accoutrements—as a part of his dress," or "as an appendage of manly
 27 equipment." *See* Rivas Decl. ¶ 41, n.63.

1 14. In my declaration, I consulted various historical appellate cases as one
2 of several types of primary sources that help us understand the views, customs,
3 practices, beliefs, and behaviors of the people who lived during that era. Cramer,
4 on the other hand, engages in a narrow reading of appellate cases, often focusing
5 exclusively on a single line or passage and missing the bigger picture as a result.

6 15. Cramer's statements regarding the case of *Wright v. Commonwealth*
7 (an appellate decision which I did not discuss in my report) illustrate this point.
8 The takeaway from the *Wright* case is that a concealed-carry law, constitutionally
9 challenged as obnoxious to the Pennsylvania constitution's right to bear arms, was
10 upheld as constitutional by the state supreme court. Cramer recounts the setting
11 and disposition of the case and then focuses upon phrases within this short opinion
12 and its headnotes, ultimately positing an unanswerable question about whether that
13 court considered carrying a weapon concealed to be *prima facie* evidence of
14 malicious intent. *See* Clayton Cramer Rebuttal Decl. ¶¶ 120-122, *May v. Bonta*
15 Dkt. No. 29-15. This question is unanswerable because it is not addressed in the
16 opinion, as the jury found the defendant not guilty. We cannot know if the jury
17 decision rested upon the defendant's proving that he *had not* actually concealed the
18 weapon, or that he *had not* carried it with malicious intent. But we can take away
19 from the case that the defendant engaged in a behavior that at least appeared to
20 violate the law, that he subsequently convinced a jury that he was not guilty of such
21 criminal behavior, and that the state supreme court upheld the challenged statute as
22 constitutional.

23 16. None of Cramer's statements regarding *Wright v. Commonwealth*
24 undermine the evidence presented in my declaration, nor do they rebut the portion
25 of my declaration which Mr. Cramer claims that they do. Paragraph 36 of my
26 declaration describes certain weapon regulations that were enacted in Philadelphia
27 in the nineteenth century; it does not make claims about concealment of weapons as
28 *prima facie* evidence of malintent. *See* Rivas Decl. ¶ 36. Furthermore, *Wright v.*

1 *Commonwealth* involved a public carry law that was not in effect in Philadelphia,
 2 but rather in in Schuylkill County, Pennsylvania.

3 17. Moreover, Cramer’s rebuttal declaration contains significant
 4 misreadings of certain historical appellate cases. One striking example is his
 5 handling of nineteenth-century Texas history and *English v. State*. See Clayton
 6 Cramer Rebuttal Decl. ¶ 138, *May v. Bonta* Dkt. No. 29-15. Cramer holds up
 7 *Cockrum v. State* (1859) as a guiding precedent over *English v. State* (1872), when
 8 in fact it was decided under a different constitution and in regard to a sentence
 9 enhancement for manslaughter committed by bowie knife (not a public carry law).
 10 Moreover, the author of the *Cockrum* opinion later led the state high court during
 11 its hearing of *State v. Duke* (1875), which (like *English*) upheld the constitutionality
 12 of the deadly weapon law.

13 18. Cramer also claims that I “ignore[d] *English*’s incorrect blaming the
 14 Texas arms provision’s origin on Mexicans.” *Id.* ¶ 139. In making this claim,
 15 Cramer seems to erroneously read a portion of the opinion as attributing the weapon
 16 regulations of 1870 and 1871 to Texas’s Hispano-Mexican heritage. In fact, that
 17 portion of the opinion responds to one of three arguments mounted against the
 18 challenged statutes (a public carry law and a sensitive places law): that they
 19 violated the customs of the people of Texas. Judge Moses Walker’s words in the
 20 *English* opinion point to a low view of the Hispano-Mexican legacy in Texas, but
 21 he connected its influence to *weapon-carrying*, not weapon regulation. The bigoted
 22 and racist sentiments of historical Americans are rightfully viewed as deplorable
 23 from our modern perspective, but sifting through such material with the guidance of
 24 quality historical scholarship is an important part of the historian’s task. Cramer
 25 seemingly reads and attempts to analyze legal opinions in a vacuum, divorced from
 26 their context and without such guidance from appropriate secondary sources. As a
 27 result, he errs in his reading of *English*.

28

1 19. Cramer's objection to my review of historical appellate cases also
 2 reaches to travel-related cases, again focusing narrowly on particular phrases and
 3 missing the bigger picture. For example, Cramer objects to my description of
 4 *Eslava v. State* and its import. *See* Clayton Cramer Rebuttal Decl. ¶¶ 145-147, *May*
 5 *v. Bonta* Dkt. No. 29-15. In my declaration, I stated that the *Eslava* decision
 6 described the traveler exception as only applying outside of organized towns and
 7 cities, meaning that it did not apply to everyday, intracity transportation. *See* Rivas
 8 Decl. ¶ 59. In response, Cramer focuses upon a single sentence from the opinion:
 9 that the man charged with carrying unlawfully did not deposit his guns upon
 10 arriving in town or adjust the manner of wearing them (from concealed to open
 11 carry). *See* Clayton Cramer Rebuttal Decl. ¶ 146, *May v. Bonta* Dkt. No. 29-15.
 12 However, this point does nothing to rebut or contradict the opinions set forth in
 13 Paragraphs 56-62 of my declaration, which explain how nineteenth-century courts
 14 interpreted travel exceptions.

15 20. Finally, regarding the case *Carr v. State* (1879), Cramer focuses only
 16 upon the fact that the case was reversed and remanded because the guns carried by
 17 the defendant were unloaded and inoperable, rather than what the case had to say
 18 about the scope of the traveler exception. *See* Clayton Cramer Rebuttal Decl.
 19 ¶ 144, *May v. Bonta* Dkt. No. 29-15. Again, nothing in Cramer's declaration
 20 negates the *Carr* court's holding that "[t]ravelers do not need weapons, whilst
 21 stopping in towns, any more than citizens do." Rivas Decl. ¶ 59.

22 **B. Cramer's Statements Regarding Evidence Cited in my Declaration**

23 21. In addition, Cramer repeatedly misconstrues evidence presented in my
 24 declaration. For example, Cramer appears to believe that I invoked the 1725 South
 25 Carolina ferry law as an example of a historical gun regulation. *See* Clayton
 26 Cramer Rebuttal Decl. ¶ 150, *May v. Bonta* Dkt. No. 29-15. I did not. In fact,
 27 plaintiffs invoked that law in an attempt to support their position that carrying
 28 weapons aboard public transportation was common at the time of the Founding.

1 My discussion of the law in question sought to place it within its regional and
 2 political context. In doing so, I offered a *potential explanation* for why ferry
 3 operators were mandated not to charge armed men in times of emergency, not a
 4 positive argument about whether firearms were carried aboard ferries during times
 5 of peace. *See* Rivas Decl. ¶ 64. Cramer appears to believe that a “formal logic
 6 term” can highlight some fallacy on my part, when in fact it is Cramer who makes
 7 the redundant argument that not charging armed men to ride the ferry during
 8 emergencies necessarily means that armed men rode the ferry. Of course, this
 9 sheds absolutely no light on the question that matters—whether carrying weapons
 10 aboard ferries was common—because the no-charge rule only applied during
 11 *emergencies* when such arming was a matter of communal security. This is another
 12 point that I made in my declaration: that the law does not indicate “that customers
 13 carried weapons on their person in times of peace.” *Id.*

14 22. Cramer also raises the point that laws authorizing railroad police do
 15 not in and of themselves limit the rights of train passengers to carry weapons. *See*
 16 Clayton Cramer Rebuttal Decl. ¶ 158, *May v. Bonta* Dkt. No. 29-15. I did not
 17 introduce the subject of railroad police in an effort to make that assertion. Rather, I
 18 explained that the authorization of railroad police demonstrates that nineteenth-
 19 century Americans understood laws and statutes (including public carry laws) to
 20 apply aboard trains. *See* Rivas Decl. ¶ 68.

21 **C. Cramer’s Statements Regarding the Statute of Northampton**

22 23. Cramer suggests that the Statute of Northampton and common law
 23 precedent regarding the carrying of weapons were not in effect in the nineteenth-
 24 century United States. *See* Clayton Cramer Rebuttal Decl. ¶¶ 128-129, *May v.*
 25 *Bonta* Dkt. No. 29-15. He is mistaken.

26 24. The fact that Francois Xavier Martin (who, according to Cramer, was
 27 tasked with compiling all British laws that may have effect in North Carolina, *see*
 28 Clayton Cramer Rebuttal Decl. ¶ 129, *May v. Bonta* Dkt. No. 29-15) included the

1 Statute of Northampton in his compilation indeed proves its efficacy. Cramer also
 2 points to the court in *Huntley* (1843) rejecting the Statute of Northampton as good
 3 law in North Carolina as a result of state legislation dating to 1838 that abandoned
 4 English common law. *Id.* ¶ 135. But headnotes from the case state that “[t]he
 5 offence of riding or going armed with unusual and dangerous weapons, to the terror
 6 of the people, is an offence at common law, and is indictable in this State.”¹ The
 7 *Huntley* court may have read the 1838 legislation to replace the Statute of
 8 Northampton itself, but it did not reject the common law tradition regarding the
 9 restriction of weapon carrying that derived from the Statute of Northampton.

10 25. This evidence from North Carolina’s *Huntley* decision supports the
 11 notion that Americans absorbed into their law and legal practice the common law
 12 traditions regarding weapon-carrying, which were most succinctly encapsulated in
 13 the Statute of Northampton. Moreover, I quoted a Tennessee statute from 1801
 14 which used very similar language to the Statute of Northampton, and reviewed the
 15 “Massachusetts Model” laws that did much the same. *See* Rivas Decl. ¶¶ 40 n.59.
 16 Finally, the 1753 Philadelphia mayoral proclamation that opened the market days
 17 (*id.* ¶ 18) used language quite similar to the Statute of Northampton. As previously
 18 noted, Cramer’s rebuttal declaration concedes that “[t]his might well be tradition.”
 19 *See* Clayton Cramer Rebuttal Decl. ¶ 112, *May v. Bonta* Dkt. No. 29-15.

20 **D. Cramer’s Statements Regarding UPRR Special Agents**

21 26. Finally, Cramer points out that Paragraph 70 of my declaration was
 22 missing a footnote related to UPRR special agents. *See* Clayton Cramer Rebuttal
 23 Decl. ¶ 161, *May v. Bonta* Dkt. No. 29-15. The information regarding the Federal
 24 Bureau of Investigation’s 1950 correspondence comes from the Union Pacific
 25 Railroad Collection housed at the California State Railroad Museum Library and
 26 Archives. The following text should have been included in a footnote: “Firearms

27

¹ *State v. Huntley*, 25 N. C. 418 (1843). This sentence from *Huntley*’s
 28 headnotes was subsequently quoted in *Roten v. State*, 86 N. C. 701 (1882).

1 Records," MS 54, Box 3, Folder 1, Union Pacific Railroad collection. California
2 State Railroad Museum Library and Archives.

3

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed on December 7, 2023, at Fort Worth, Texas.

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Brennan Gardner Rivas

8 Dr. Brennan Gardner Rivas

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CERTIFICATE OF SERVICE

Case Names: ***Reno May, et al. v. Robert Bonta, et al.;***
Carralero, Marco Antonio, et al. v. Rob Bonta

Case Nos. **8:23-cv-01696-CJC (ADSx); 8:23-cv-01798-CJC (ADSx)**

I hereby certify that on December 7, 2023, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

SUR-REBUTTAL DECLARATION OF DR. BRENNAN RIVAS IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished electronically by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct.

Executed on December 7, 2023, at San Francisco, California.

Vanessa Jordan

Declarant

Vanessa Jordan

Signature